

**REMARKS**

Applicant respectfully requests reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

After amending the claims as set forth above, claims 1-3 and 5-11 are now pending in this application.

Applicant would like to thank the Examiner for the careful consideration of the claims.

Amendments to the claims

It is respectfully submitted that the amendment to the claims merely corrects a typographical and/or grammatical error and, therefore, does not raise new issues.

Statutory Basis for the Rejection for the claims

As an initial matter, the statutory basis for the rejection of claims 1-3 and 5-11 is set out on page 2 of the Office Action. The second sentence on page 2 states “Claims 1-3 and 5-11 are rejected under 35 U.S.C. § 102(b) as being anticipated by Huggins et al. in view of Yamaguch et al. and Iwasaki et al.” This second sentence states the rejection is a § 102(b) rejection, but lists a combination of three references. A purported anticipation rejection that actually relies on a combination of several references would clearly be improper (§ 103 would be the statutory basis for a combination of references). Moreover, the bulk of the following paragraph in the Office Action gives the impression that the claims are being analyzed under § 102(b) since only one reference is compared with claim 1. Hence, Applicant will primarily treat the rejection as based on § 102 and as relying on a single reference.

If, however, the PTO truly intended to rely on a combination of references under § 103, a final rejection is improper since the PTO has not fully articulated the basis for denying the patentability of the subject matter of the claims. For at least this reason, reconsideration and withdrawal of the finality of the Office Action are respectfully requested.

The rejection of the claims assuming § 102(b) was the statutory basis for rejection

Assuming that the PTO has rejected claims 1-3 and 5-11 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent 3,045,979 (“Huggins”), this rejection is traversed for at least

the following reasons.

Claim 1 recites, among other features, the feature “wherein at least one of the corrugated fins has gills for directing the second fluid.” Huggins does not teach the use of gills.

In addition, claim 1 recites the following features: “flat tubes through which a first fluid can flow...which are spaced apart forming flow paths for the second fluid passing through the heat exchanger...cooling fins being arranged in the flow paths, which in each case extend between adjacent flat tubes...wherein multiple corrugated fins, which are arranged in series in the direction of the flow of the second fluid and laterally offset in relation to one another, are provided as the cooling fins...and wherein the fins are arranged laterally offset in a direction of the flow of the first fluid.” Huggins does not teach the use of such cooling fins as discussed below.

In particular, Huggins teaches a series of adjacent flat tubes in which cooling fins are arranged in the flow paths of the second fluid. However, the cooling fins of Huggins that are between the adjacent tubes are not multiple corrugated fins in a series but a single corrugated fin as depicted in the figures below. Because only one corrugated fin is between adjacent tubes, there is no disclosure of the fins between adjacent flat tubes being laterally offset in the direction of the second fluid because a single fin cannot be laterally offset from itself. Furthermore, because only one corrugated fin is between adjacent tubes, there is no disclosure of the fins being laterally offset in a direction of the first fluid because again a single corrugated fin cannot be offset from itself.

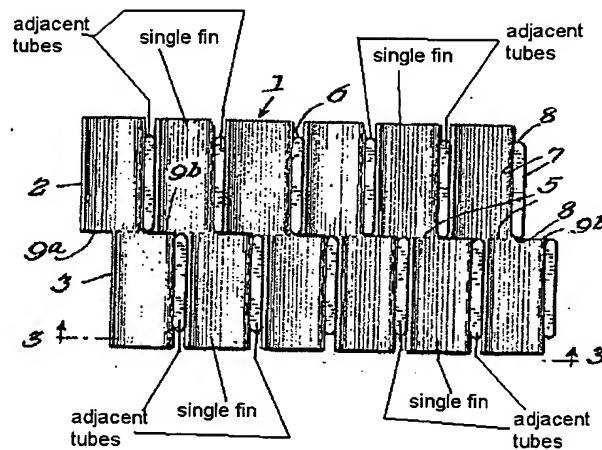


FIG. 2 of Huggins

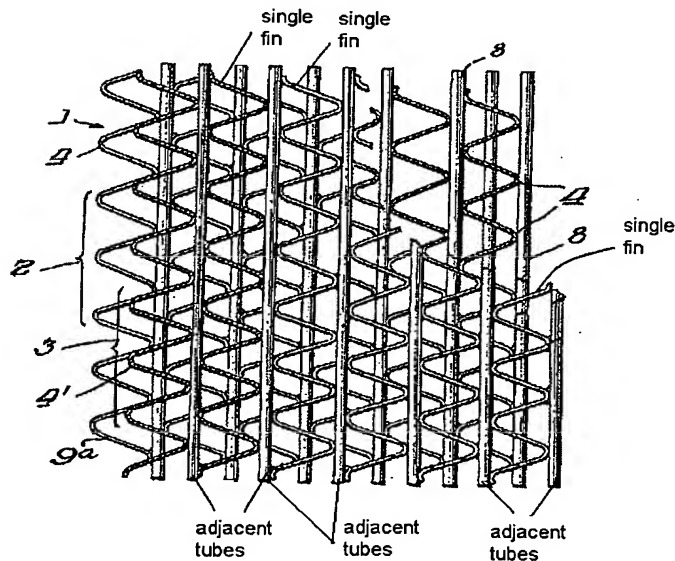


FIG. 3 of Huggins

The PTO asserts that the fins of Huggins “are offset not only in a direction perpendicular to both the air flow and fluid (tube side) flow direction, but are also offset in the tube axis (tube side) flow direction as seen in Fig. 3. If these serially disposed corrugated fins 4, 4” were aligned (i.e., not offset), the peaks and valleys of these fins would be aligned, and the flat portions of these fins would not be coplanar along one side as shown in Fig. 3.” However, there are no multiple fins between adjacent tubes, which are offset in the direction of the air flow and offset in the direction of the fluid flow direction. Huggins merely teaches

a single fin between adjacent tubes. The overall structure of the fins may be offset in the direction of the air flow and offset in the direction of the fluid flow but this overall structure is not disclosed or suggested to be placed between two adjacent tubes.

Because Huggins does not teach a corrugated fin with gills or multiple corrugated fins arranged between adjacent flat tubes, Huggins does not disclose all the features of claim 1. In addition, dependent claims 2-3 and 5-11 are also patentable for at least the same reasons as claim 1 from which they depend since they contain all the limitations of claim 1. For these reasons, reconsideration and withdrawal of the rejection is respectfully requested.

The rejection of the claims assuming § 103(a) was the statutory basis for rejection

Assuming that the PTO intended to reject claims 1-3 and 5-11 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent 3,045,979 (“Huggins”) in view of U.S. Patent 3,724,538 (“Yamaguchi”) and U.S. Patent 6,889,757 (“Iwasaki”), this rejection is traversed for at least the following reasons.

The PTO has not acknowledged any deficiency in Huggins, has not stated what teachings in Yamaguchi and Iwasaki allegedly cure that deficiency, and has not addressed any motivation to combine. Hence, the PTO has not made a prima facie case. To the extent that the PTO has referred to comments in the Office Action dated August 10, 2005, regarding the rejection of claims 4-7, those comments do not at all address the deficiencies of the primary reference to Huggins that have been explained above. Thus, a combination of the secondary references with Huggins would not, in any event, meet the subject matter defined by claim 1.

As explained above, Huggins does not teach multiple corrugated fins arranged between adjacent flat tubes. Yamaguchi and Iwasaki fail to cure this deficiency. In addition, dependent claims 2-3 and 5-11 are also patentable for at least the same reason as claim 1 from which they depend since they contain all the limitations of claim 1. For these reasons, reconsideration and withdrawal of the rejection is respectfully requested.

Applicant believes that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check or credit card payment form being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

Date \_\_\_\_\_

By 

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